

**TECHNOLOGY PARTNERSHIPS
PERSONNEL EXCHANGE AGREEMENT**

This Technology Partnerships Personnel Exchange Agreement, effective on the date of last signature hereto, is by and between Sandia Corporation ("Sandia"), a corporation whose principal place of business is located in Albuquerque, New Mexico and Livermore, California, and XYZ, Incorporated ("XYZ") a corporation whose principal place of business is located in _____.

This Technology Partnerships Personnel Exchange Agreement is for the assignment at XYZ facilities in _____ an employee of Sandia ("Sandia Exchange Employee"). Sandia Employees will perform the work set forth in Appendix A attached herewith.

WITNESS THAT:

WHEREAS, Sandia manages and operates a federally-owned facility known as Sandia National Laboratories for the United States Department of Energy ("DOE") under Contract DE-AC04-94AL8500;

WHEREAS, XYZ and Sandia each has a recognized expertise in certain areas that may be of mutual benefit; and

WHEREAS, Sandia agrees to accept the assignment of the XYZ Exchange Employee for undertaking to receive on-the-job training and/or rendering expert advice and services in the field in which such XYZ Exchange Employee has such professional qualifications at such place or places and at such times mutually satisfactory to Sandia and XYZ; and

WHEREAS, XYZ agrees to accept the assignment of the Sandia Exchange Employee for undertaking to receive on-the-job training and/or rendering expert advice and services in the field in which such Sandia Exchange Employee has such professional qualifications at such place or places and at such time mutually satisfactory to Sandia and XYZ; and

WHEREAS, Sandia and XYZ are willing and able to make available their respective Exchange Employee in accordance with the terms and conditions hereinafter in this agreement more fully set forth,

THEREFORE, in consideration of the agreements of the respective parties hereto, and for the faithful performance of this Personnel Exchange Agreement, it is hereby agreed as follows:

Article I--Assignment and Term

1.1 Sandia will assign the XYZ Exchange Employee to Sandia for a for a term of approximately ____ (__) days.

1.2 XYZ will assign the Sandia Exchange Employee to XYZ for a term of approximately ____ (__) days.

1.3 The term of assignment may be lengthened or shortened by either party, for any reason. The party wishing to modify the term shall provide a written notice to the other party. Thereafter, the parties agree that any modification to the term of assignment will be implemented only in a writing executed by authorized representatives of both parties.

1.4 The XYZ Exchange Employee is being assigned to undertake activities in the area set forth in Exhibit ____.

1.5 The Sandia Exchange Employee is being assigned to undertake activities in the area set forth in Exhibit ____.

Article II--Compensation and Employee Conduct

2.1 (Option 1) During the term of this agreement, the XYZ Exchange Employee shall be compensated directly by XYZ, and all employee welfare and pension benefits provided to the XYZ Exchange Employee are provided directly by XYZ. The XYZ Exchange Employee remains an employee of XYZ at all times for all purposes, including but not limited to welfare and pension benefits.

2.1 (Option 2) During the term of this agreement, the Sandia Exchange Employee shall be compensated directly by Sandia, and all employee welfare and pension benefits provided to the Sandia Exchange Employee is provided directly by Sandia. The Sandia Exchange Employee remains an employee of Sandia at all times for all purposes, including but not limited to welfare and pension benefits.

2.2 (Option 3 - Where the work is greater than \$25K, will last longer than 90 days, and XYZ pays for Sandia Exchange Employee)

The Sandia Exchange Employee shall be compensated indirectly by XYZ. In this event, it is understood that Sandia is entitled to full cost recovery. It is understood that DOE mandates that Sandia receive advance funding.

A. XYZ shall pay Sandia the amount of XXX Thousand Dollars (\$XXX,000) upon receipt of Sandia's invoice to provide for the DOE 90-day advance funding requirement. The initial invoice must be for 120 days in order to meet the DOE's

90-day advance funding requirement. Sandia shall invoice this amount after execution of this Agreement by both Parties. Sandia shall not begin work under this Agreement until the funds are received.

B. Sandia shall submit invoices to XYZ to maintain the required 90-day advance funding balance. XYZ shall pay these monthly invoices within thirty (30) calendar days after receipt until XYZ's total contribution for costs to be incurred by Sandia as specified in Paragraph A above is reached.

C. When the total payments reach XYZ's said total contribution, Sandia will no longer invoice XYZ. Sandia will continue to charge the funding balance until the account is depleted or the assignment is completed.

D. Upon completion of the assignment or termination of this Agreement, Sandia shall refund any account balance to XYZ.

E. All costs incurred by Sandia under this Agreement and payable by XYZ shall be computed in accordance with Sandia's standard accounting practices.

F. Payments are necessary to maintain a continuous 90-day advance funding balance until the final 90 days of this Agreement, as required by DOE, to continue Sandia's participation in this Agreement. In the event that XYZ's 90-day advance funding balance, for work funded solely by XYZ, falls below the advance funding requirement, work by Sandia must stop. Work may be resumed upon full replenishment of the 90-day advance funding plus sufficient funding beyond the 90-day requirement to fund thirty (30) days of work.

G. XYZ's check must be identified with the words, "Technology Partnerships Personnel Exchange Agreement" and the corresponding agreement number, and should be made payable to "Sandia Corporation," and should be mailed by Federal Express to the person at the address set forth in Paragraph 7.1.

H. Alternatively, XYZ may electronically transfer funds to Sandia by directing said funds to "Sunwest Bank of Albuquerque, NA, #1070 00327, for Sandia Corporation Account No. 01-0002860-4." A payment advice identifying XYZ, agreement number, EFT date and amount should be mailed to the person at the address set forth in Paragraph 7.1.

2.3 (Option 4 - Where the funds in are less than \$25K or the work will be completed in 90 days or less, and XYZ pays for Sandia Exchange Employee)

XYZ shall pay Sandia the amount of XXX Thousand Dollars (\$XXX,000) upon receipt of Sandia's invoice to cover the entire project and period of this Agreement.

A. XYZ's check must be identified with the words, "Technology Partnerships Personnel Exchange Agreement" and the corresponding agreement number, and should be made payable to "Sandia Corporation," and should be mailed by Federal Express to the person at the address set forth in Paragraph 7.1.

C. Alternatively, XYZ may electronically transfer funds to Sandia by directing said funds to "Sunwest Bank of Albuquerque, NA, #1070 00327, for Sandia Corporation Account No. 01-0002860-4." A payment advice identifying XYZ, agreement number, EFT date and amount should be mailed to the person at the address set forth in Paragraph 7.1.

2.4 (Use together with Option 1) XYZ, Sandia, and Sandia Exchange Employee agree and understand that even when XYZ is indirectly compensating Sandia Exchange Employee pursuant to the advanced funding mechanism described herein, the Sandia Exchange Employee remains an employee of Sandia at all times for all purposes, including but not limited to welfare and pension benefits.

2.5 (Use together with Option 2) XYZ, Sandia and Sandia Exchange Employee agree and understand that even when XYZ is indirectly compensating Sandia Exchange Employee pursuant to the terms and conditions described herein, the Sandia Exchange Employee remains an employee of Sandia at all times for all purposes, including but not limited to welfare and pension benefits.

2.6 XYZ, Sandia and Sandia Exchange Employee agree and understand that the implementation of the funding mechanism for Sandia Exchange Employee shall not supplement the regular earnings the Sandia Exchange Employee would be receiving directly from Sandia were it not for this agreement, but shall constitute the only compensation the Sandia Exchange Employee will receive from Sandia during the term of this agreement.

2.7 (Option 5) The Department of Energy (DOE) provides advanced funding to facilitate this Personnel Exchange Agreement. In this event, the parties agree to undertake any and all necessary steps to effect the successful transfer of funds from DOE.

2.8 While at Sandia, the XYZ Exchange Employee will be expected to comply with policies and procedures applicable to guests and employees of Sandia, particularly including policies related to health and safety, security, and conduct of employees. Sandia agrees to provide appropriate training, when necessary, in such areas.

2.9 While at XYZ, the Sandia Exchange Employee will be expected to comply with the policies and procedures applicable to guests and employees of XYZ, particularly including policies related to health and safety, security, and conduct of employees. XYZ agrees to provide appropriate training, when necessary, in such areas.

2.10 During this assignment the XYZ Exchange Employee will be considered to be under the administrative and technical direction of Sandia. Sandia agrees to provide the XYZ Exchange Employee with office space and associated support services appropriate to meet the mutual objectives of this Agreement.

2.11 During this assignment the Sandia Exchange Employee will be considered to be under the administrative and technical direction of XYZ. XYZ agrees to provide the Sandia Exchange Employee with office space and associated support services appropriate to meet the mutual objectives of this Agreement.

2.12 XYZ hereby exonerates Sandia from and agrees to indemnify, defend, protect and hold harmless Sandia and its employees, officers and directors from and against any and all claims, demands, losses, suits, causes of action and all expenses related thereto (including without limitation, court costs and attorney's fees) with respect to the loss of or damage to any property of XYZ or of XYZ's contractors or subcontractors or to

the death of or injury to any employee of XYZ arising out of or incident to the performance of Agreement, including, but not limited to any negligent act or omission of Sandia, its officers or employees.

Article III--Disclaimer, Indemnification and Release

3.1 Neither Sandia, DOE, the Government, nor any person acting on their behalf makes any warranty, expressed or implied (a) with respect to the merchantability, accuracy, completeness, usefulness, or fitness for a particular purpose of any activity of Sandia Exchange Employee under this Agreement; or (b) that the use of any assistance, information, or services provided under this Agreement will not infringe upon privately-owned intellectual property or third parties; or (c) that the use of the assistance, information, or services provided under this Agreement will be adequate or safe for any purpose and will accomplish the intended results or purposes of the Employer.

3.2 XYZ acknowledges that Sandia and its employees do not have detailed knowledge of, or significant control over, the use that XYZ will make of the activities of the XYZ Exchange Employee under this Agreement. Accordingly, XYZ assumes full responsibility for the result of such activities, and XYZ releases Sandia, DOE, the Government, and persons acting on their behalf from any liability XYZ for economic losses, consequential damages or liabilities to third parties incurred XYZ, including product liability, and including related costs and expenses of litigation arising from such use by XYZ.

3.3 XYZ will indemnify Sandia, DOE, the Government, and their employees and agents against any claim of product liability, including damages, judgments, costs, expenses and attorney's fees associated therewith, arising from the manufacture, use, sale or export by XYZ, of products derived in whole or in part from the activities of the XYZ Exchange Employee under this Agreement.

Article IV--Proprietary Information

4.1 XYZ acknowledges that during the course of this Personnel Exchange Agreement the XYZ Exchange Employee may have access to Proprietary Information of Sandia. XYZ will instruct the XYZ Exchange Employee, by concurring with the terms of this Agreement, to treat any such information of Sandia in accordance with Sandia's policies and procedures communicated to the XYZ Exchange Employee upon assignment to the Laboratory, and in accordance with any notices or markings associated with such information. XYZ is considered to be a third party with respect to the disclosure of Proprietary Information.

4.2 Sandia acknowledges that during the course of this Personnel Exchange Agreement the Sandia Exchange Employee may have access to Proprietary Information of XYZ. Sandia will instruct the Sandia Exchange Employee, by concurring with the terms of this Agreement, to treat any such information of XYZ in accordance with XYZ's policies and procedures communicated to the Sandia Exchange Employee upon assignment to XYZ's facilities at _____, and in accordance with any notices or markings associated with such information. Sandia is considered to be a third party with respect to the disclosure of Proprietary Information.

Article V--Intellectual Property Rights

5.1 While the development of intellectual property under this Agreement is not anticipated, the allocation of patent rights, but not copyrights, is governed by federal statute (42 U.S.C. 5908), DOE regulations (Chapter 9 of Title 48 CFR) and Sandia's contract with DOE, all of which give certain ownership rights to the federal government. Such ownership rights are waivable by the federal government.

Article VI--Security

6.1 This Agreement does not contemplate that XYZ will receive any classified information during the term of this Agreement. Sandia will obtain an appropriate clearance for the XYZ Exchange Employee in accordance with Sandia and DOE procedures. If classified information is to be made available to XYZ, an amendment to this Agreement will be required.

Article VII--Communications

7.1 Communications between the Parties regarding the administration of this Agreement shall be addressed to the following points of contact:

Sandia National Laboratories
Attention:

P.O. Box 5800, Mailstop ____
Albuquerque, NM 87185-____
Phone: (505) ____
Fax: (505) _____

XYZ
Attention: _____

Phone: (____) ____
Fax: (____) _____

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Article VIII--Termination

8.1 Either Sandia or XYZ may terminate this Agreement at any time for any reason by giving the other Party thirty (30) calendar days' advance written notice of such action. Any such termination shall not affect either party's obligations of confidentiality, nonuse and nondisclosure with respect to proprietary information disclosed prior to the effective date of termination.

Article IX--Disputes

9.1 The Parties shall attempt to jointly resolve all disputes arising from this Agreement. If the Parties are unable to jointly resolve a dispute within a reasonable period of time, the dispute shall be settled by the DOE Contracting Officer, who shall reduce his/her decision to writing within sixty (60) days of receiving in writing the request for a decision by either Party to this Agreement. The DOE Contracting Officer shall mail or otherwise furnish a copy of the decision to the Parties. The decision of the DOE Contracting Officer is final unless, within one hundred twenty (120) days from the date of the DOE Contracting Officer's decision, XYZ brings an action for adjudication in a court of competent jurisdiction in the State of New Mexico. To the extent that there is no applicable U.S. Federal law, this Agreement and performance thereunder shall be governed by the laws of the State of New Mexico.

IN CONSIDERATION OF THE FOREGOING TERMS AND CONDITIONS, XYZ, Inc. and Sandia Corporation have caused this Technology Partnerships Personnel Exchange Agreement to be executed in duplicate by their duly authorized representatives. This Personnel Exchange Agreement will be effective on the last day and year written below.

DEPARTMENT OF ENERGY CERTIFICATION:

By:
Signature

Date:

FOR SANDIA:

By:

Warren D. Siemens

Title: Director, Technology Partnerships and Commercialization

Date:

FOR XYZ:

By:

Title:

Date:

THIS AGREEMENT DOES NOT BIND OR OBLIGATE EITHER PARTY IN ANY MANNER UNLESS
DULY EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF BOTH PARTIES.

CONCURRENCE BY XYZ EXCHANGE EMPLOYEE:

I have read this Agreement and I accept its terms.

XYZ EXCHANGE EMPLOYEE

Social Number Number:

Date:

CONCURRENCE BY SANDIA EXCHANGE EMPLOYEE:

I have read this Agreement and I accept its terms.

SANDIA EXCHANGE EMPLOYEE

Social Security Number:

Date: _____